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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

KYENNA McCONICO and KENNETHA	)	
BARNES, as independent	)	Case No. 24 C 1654
co-administrators of the Estate	)	
of ISAAC GOODLOW III, Deceased,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
VILLAGE OF CAROL STREAM, a	)	
municipal corporation, VILLAGE	)	
OF CAROL STREAM POLICE OFFICERS	)	
JOHN DOE #1-6,	)	Chicago, Illinois
	)	April 18, 2024
Defendants.	)	9:30 a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION HEARING  
BEFORE THE HONORABLE JOHN F. KNESS

APPEARANCES:

For the Plaintiffs:	HART MCLAUGHLIN & ELDRIDGE, LLC BY: MR. STEVEN ALAN HART 1 S. Dearborn Street, Suite 1400 Chicago, Illinois 60603
For the Defendants:	BEST VANDERLAAN & HARRINGTON BY: MS. ALISON M. HARRINGTON 25 E. Washington Street, Suite 800 Chicago, Illinois 60602
Court Reporter:	NANCY C. LABELLA, CSR, RDR, FCRR Official Court Reporter 219 S. Dearborn Street, Room 2128 Chicago, Illinois 60604 (312) 435-6890 Nancy_LaBella@ilnd.uscourts.gov

\* \* \* \* \*

1 (Proceedings heard in open court:)

2 THE CLERK: 24 cv 1654, McConico v. Village of Carol  
3 Stream.

4 THE COURT: Good morning.

5 MR. HART: Good morning, your Honor. Steven Hart on  
6 behalf of the Estate of Isaac Goodlow.

7 THE COURT: Good morning, Mr. Hart.

8 MS. HARRINGTON: Alison Harrington on behalf of the  
9 Village of Carol Stream.

10 THE COURT: Good morning to you, Ms. Harrington.

11 We're here because this is a newly filed case. It was  
12 filed at the end of February. I don't believe there's --  
13 there's not been a responsive pleading yet or a response to the  
14 complaint from the defendant Village. Is that correct?

15 MS. HARRINGTON: That is correct, your Honor.

16 THE COURT: And the issue we have now is this request  
17 for early discovery, which is why I set this for an in-person  
18 hearing. Thank you both for coming in on that. I like to try  
19 to get lawyers in in the courtroom in person at least a couple  
20 of times during a case, so I figured this would be a good  
21 opportunity.

22 It looks to me like the Village of Carol Stream waived  
23 service of process; is that right?

24 MS. HARRINGTON: Correct.

25 THE COURT: Your deadline for responding to the

1 complaint is when?

2 MS. HARRINGTON: April 29th.

3 THE COURT: Understood. Are you in a position -- you  
4 don't have to tell me -- to say whether you expect to answer  
5 the complaint or to file a motion directed against the  
6 pleading?

7 MS. HARRINGTON: The anticipation is to file an  
8 answer. There's one issue I was going to raise with Mr. Hart  
9 as to part of one of their "wherefore" clauses. They're  
10 seeking punitive damages within survival and the wrongful death  
11 counts. So I wanted to discuss that with him. That could be  
12 subject maybe to a potential motion to strike.

13 THE COURT: All right. Thank you for that  
14 clarification.

15 The issue of early discovery, of course, is a pretty  
16 wide open one. There's a lot of discretion on the part of the  
17 trial court. I have looked at your pleadings. We just wrapped  
18 up a jury trial, so I have not fully internalized the request  
19 for early discovery. So let me ask you both to please  
20 summarize your positions on that.

21 Mr. Hart.

22 MR. HART: Thank you, your Honor.

23 THE COURT: If you could use the microphone too,  
24 please.

25 MR. HART: Yes, your Honor.

1           Our position, I think, is clear, very straight-  
2 forward, and narrow, your Honor. We're here asking only for  
3 the disclosure of the identity of the officers involved in  
4 entering Isaac Goodlow's apartment on February 3rd of this year  
5 with their guns drawn when they knew that it was his apartment  
6 and he was unarmed. They were not invited into his apartment.  
7 And we believe, and we've alleged, that it was an unlawful  
8 entry; and then it resulted in Isaac Goodlow being shot in the  
9 chest by the Carol Stream police officers who have been --  
10 identity has been withheld from the plaintiff.

11           Plaintiff very quickly asked for the disclosure --  
12 preservation of all the relevant information, facts, and  
13 circumstances.

14           THE COURT: Let me stop you there because on that  
15 preservation point, is the Village -- and I'll refer broadly to  
16 the defendants as the Village, all of them -- is the Village  
17 aware of that preservation request and are you complying with  
18 it?

19           MS. HARRINGTON: Yes, your Honor.

20           THE COURT: Very well.

21           MS. HARRINGTON: And everything has also been turned  
22 over to MERIT, which is the independent task force that's doing  
23 the criminal investigation currently -- or investigation, I  
24 should say.

25           THE COURT: All right. Thank you. I will come back

1 to you.

2 Go ahead, Mr. Hart.

3 MR. HART: And so plaintiffs have requested, both  
4 formally through written communication and informally through  
5 verbal communication, the disclosure of the identity of these  
6 six officers who entered Isaac Goodlow's apartment.

7 THE COURT: Let me just stop you because I want to  
8 make sure that I'm clear on both what you're asking for and the  
9 process.

10 Are you looking for early 26(a) disclosures? Or are  
11 you looking to serve interrogatories? What format is this  
12 discovery going to take if I allow it?

13 MR. HART: Thank you, your Honor, because we haven't,  
14 I don't think, made it completely clear to the Court. And it  
15 was done intentionally because we don't want form to prevail  
16 over substance. We don't care how they give us this  
17 information.

18 What's important to us is the very narrow, tailored  
19 request that we're making for just the identity of the  
20 officers. Nothing more. And so we can do it in a single  
21 interrogatory request. We can even do it informally through a  
22 letter request. But what's important is that the request is  
23 extremely narrow and only for the purposes of identifying the  
24 officers.

25 THE COURT: Let me jump in and ask you -- and I'll ask

1 probing questions of both sides, so this is not meant to betray  
2 any view on the motion yet.

3 But why do you need this discovery now as opposed to  
4 in the ordinary course of litigation?

5 MR. HART: Yeah, I think it's a fair question. I  
6 think it's a good question in light of your broad discretion on  
7 this issue.

8 The answer is that there's a continuing -- it's a  
9 couple-fold. One is there's an extreme and continuing harm to  
10 the family. They've lost their son, as it relates to the  
11 parents; their brother and sister, as it relates to the  
12 siblings; and the extended family members. And that is of  
13 great mental anguish and harm to them, that their son was taken  
14 by the police and, for some reason, they're afforded some  
15 special status in not having to disclose their identities.  
16 It's not afforded to any other actor in a shooting. Names are  
17 disclosed routinely.

18 We just filed a case against the City, the Reed case,  
19 where the officers' names in that shooting were disclosed  
20 within hours of the shooting.

21 So it's a continuing mental anguish and harm to the  
22 family. We're two-and-a-half months post-shooting and no one  
23 will tell them who shot their son.

24 THE COURT: With due and great and sincere respect to  
25 the grief that the family is experiencing over the death of

1     their family member, what is it about the identity of the  
2     officers who were involved in this incident that is  
3     contributing to the -- by itself -- as you put it, extreme and  
4     continuing harm?

5             In other words, can you tie up what I think anybody  
6     could understand is grief and anguish on the part of the family  
7     over the death of a loved one, especially under circumstances  
8     like these, with the identity of the officers?

9             In other words, it could be Officer Jones. It could  
10    be Officer Kowalski or Officer X. What difference does that  
11    make at this point?

12            MR. HART: You know, without getting in too deeply  
13    into the psychology of the matter, they feel like they're  
14    entitled to know the identity of the person that shot their  
15    son. If --

16            THE COURT: Are there any more pragmatic or prosaic  
17    reasons that you would want to know the identity of the  
18    officers at this point, such as accelerating your investigation  
19    of the case and things like that?

20            MR. HART: Well, certainly those things exist, right.  
21    It would aid in our ability to investigate the case. We're  
22    entitled to, you know, disclosure of information that may be  
23    lost or memories that fade over time.

24            I'm setting those issues aside because, to me, there's  
25    a more immediate concern having to do with the family's right

1 to just know the identity.

2 And so I would just suggest to your Honor that there  
3 is a deep emotional devastation that exists with a family  
4 member when they lose someone at the hands of the police and  
5 then their identity is protected in some way.

6 So I think closure is the closest that I can come to  
7 addressing this -- you know, the DSM-IV Revised, what mental  
8 anguish they're going through. But I know that it's been  
9 continual. It's a nearly daily request of theirs: Why don't  
10 we have the name of the officer? And they've actually made the  
11 request to the Village council as recently, I think, as Monday.

12 So this is a deep issue for them. And I don't know  
13 that I can afford the Court any greater detail into the  
14 psychological remedy that this would provide, but I know it  
15 would provide them some comfort in knowing that someone cares  
16 enough to tell them at least the identify of the officers  
17 involved in this event.

18 THE COURT: Thank you. Any other reasons besides --

19 MR. HART: Yeah. I think that the -- there's public  
20 policy reasons here and, also, that this frustrates the trust  
21 of the public and the community when names are being withheld,  
22 certain privilege is afforded officers that isn't afforded  
23 to --

24 THE COURT: Well, let me ask you -- whatever the  
25 public policy reasons are and whatever a Village or a City



1 decides to do with releasing or not releasing the names of  
2 people involved, my sole job here is to govern a piece of  
3 litigation. And we have well-established rules over when  
4 discovery needs to be provided. So whatever the public policy  
5 arguments are is really not for this forum.

6           The argument for this forum is, under Rule 26, is  
7 there good cause for going around the established rule that  
8 says parties cannot get discovery until they've conferred, as  
9 required by Rule 26(f). And that's, of course, set forth in  
10 Rule 26(d).

11           It may be that the family is frustrated that the  
12 Village is not providing the names. Maybe there's some other  
13 avenue for that. I don't know. Having worked in the public  
14 sector for a long time, as well as at the local government  
15 level, I've seen a wide variety of reasons for units of local  
16 government to release information or not to release  
17 information. But that's a different forum.

18           Right now what I'm interested in is what the reason  
19 is, whether there's good cause for this request.

20           MR. HART: Yeah. So I would urge the Court to  
21 consider -- at least under the broad discretion afforded these  
22 issues, wide discretion to manage the process -- that the  
23 public policy concerns should be at least a factor.

24           But when you look at case law, the Ibarra case versus  
25 City of Chicago, decided over a decade ago by Judge -- Chief

1 Judge Ruben Castillo, he articulated the reasonableness of the  
2 request standard under the totality of the circumstances, which  
3 I think is the analysis that the Court must undertake here, and  
4 then set out some criteria for examining that under similar  
5 circumstances where the plaintiff has requested the identity of  
6 the officers involved in a shooting.

7 And Judge Castillo granted that request for expedited  
8 discovery. He found that the request that identified the  
9 officer's name only was a narrow one; that the information was  
10 readily available to the defendant, the City of Chicago in that  
11 case.

12 And of course the Village isn't claiming that this  
13 information is not readily available to them. It is. There's  
14 zero burden on the City to produce the identity -- remember,  
15 only the identity -- of the officers. And so I think we --

16 THE COURT: Let me ask you, because I have not read  
17 the Ibarra case --

18 MR. HART: I do have a copy for your Honor if you  
19 would like.

20 THE COURT: I'd like to see that if you don't mind.

21 MR. HART: Sure.

22 THE COURT: Thank you.

23 (Tendered.)

24 THE COURT: Give me just a moment here. Thank you.

25 MR. HART: And it's --

1           THE COURT: If you could point me to where he grappled  
2 with the statutory -- or rule-based standard, that would be  
3 helpful.

4           MR. HART: Yeah. It's one, two three, four, five,  
5 six, seven, eight, nine, ten, 11, 12 -- it's 13 pages back. Or  
6 it's four -- or three pages from the end, if that's easier,  
7 under motion for expedited discovery, Section VI of the  
8 holding.

9           THE COURT: I see it. Thank you.

10          MR. HART: Yes.

11          THE COURT: Give me just a moment, please, Mr. Hart.

12          (Brief pause.)

13          THE COURT: The print here is a little cut off at the  
14 bottom of my second to last page, but I think I get the point.

15          As far as I can tell, Judge Castillo, who at that  
16 point was -- I don't know if he was -- he was not chief judge  
17 at that point. Then Judge Castillo noted the -- what I've  
18 noted as well over the years, is that there's kind of two  
19 approaches to early discovery. One is a multi-factor test.  
20 And the other is -- the other, which I believe Judge Castillo  
21 took here; it appeared that he explicitly adopted that  
22 approach. But the second approach was the court should  
23 evaluate a motion for expedited discovery, quote, on the  
24 entirety of the record to date and the reasonableness of the  
25 request in light of all the surrounding circumstances, end

1 quote.

2 That's noted in Southern District of -- one second.

3 A Northern District of Illinois case from 2000,  
4 Merrill Lynch v. O'Connor, 194 F.R.D. 618 at page 624.

5 It appears that Judge Castillo looked at the requests  
6 made there, said they were narrowly tailored, and that they  
7 were reasonable.

8 With due respect to Judge Castillo, I think that the  
9 good cause standard of Rule 26 requires a little bit more  
10 analysis than merely saying it sounds reasonable.

11 And to that end, I am more persuaded, in general, by  
12 the approach that has been noted in Sony Music Entertainment v.  
13 Doe 1-40, a Southern District of New York case from 2004,  
14 reported at 326 F. Supp. 2d 556. That's a five-part test. It  
15 says a court should first -- well, before granting a request  
16 for early discovery, a court should require a showing of,  
17 number one, a prima facie claim of actionable harm; two, the  
18 specificity of the discovery request; three, the absence of  
19 alternative means to obtain the subpoenaed information; four, a  
20 central need for the subpoenaed information to advance the  
21 claim; and, five, consideration of the defendant's privacy  
22 interests.

23 Having heard this -- and I'm putting you on the spot,  
24 Mr. Hart, I recognize that -- under that test, do you think the  
25 request for early discovery meets the good cause standard?

1 MR. HART: So I didn't get all --

2 THE COURT: Let me do it one at a time.

3 MR. HART: I look -- I heard part of it and --

4 THE COURT: Well, let me just say the test is really:  
5 Is there a prima facie claim of actionable harm? I'll assume  
6 that's present here.

7 Two, specificity of the discovery request. I will  
8 assume, without even hearing from the defendant, that that's  
9 met.

10 Three, the absence of alternative means to obtain the  
11 subpoenaed information. I'll assume that's met because, as of  
12 now, Ms. Harrington, it sounds like the Village is not willing  
13 to provide this information. Is that correct?

14 MS. HARRINGTON: Correct.

15 THE COURT: So there's no alternative means for the  
16 plaintiffs.

17 I'll skip over four and go to five, which is  
18 consideration of the defendants' privacy interests. Does the  
19 Village assert any privacy interests on behalf of the  
20 unidentified officers?

21 MS. HARRINGTON: I mean, at this juncture while  
22 they're undergo- -- or under -- subject of an investigation  
23 that's near its conclusion, I do think they have a privacy  
24 interest in the outcome of whether their name is disclosed  
25 prior to it being known whether they're going to be charged

1 with a criminal act or not.

2 THE COURT: Well, leaving aside whatever -- here's  
3 another point, frankly, at this stage, whatever happens in the  
4 criminal case has nothing to do with this case. It may  
5 eventually for various reasons; but for now, for purposes of  
6 identifying the officers, unidentified officers have been named  
7 in a lawsuit. People sue people all the time. Sometimes they  
8 win, sometimes they don't. We don't know what will happen in  
9 this case. I'm going to assume that there's a prima facie  
10 claim on the part of the plaintiffs, without having seen any  
11 motion to dismiss or any of the facts of the case.

12 But whether there's a criminal case or not against  
13 them, the plaintiff, through counsel, subject to Rule 11, has  
14 said that these officers committed civilly actionable conduct.  
15 They're entitled to do that under the rules. So whether these  
16 officers are charged or not is really not material to whether I  
17 should require early discovery to identify who they are.

18 Do you have any reason to tell me right now that their  
19 identities will always remain under seal, if you will, in this  
20 case?

21 MS. HARRINGTON: No.

22 THE COURT: Okay. So it seems to me then -- I will  
23 say that I think under this non-binding test, which is intended  
24 only to provide guidance in a very wide-open discretionary call  
25 under Sony Music, the case that I've been reciting from, I'll

1 assume as well that the defendants' privacy interests are not  
2 all that great.

3           It seems to me that this boils down to what we talked  
4 about at the beginning, which is factor four of the Sony Music  
5 test. And that's a showing that the plaintiff has a central  
6 need for the information to advance the claim. That's what I'm  
7 going to focus on.

8           I'll let the defendant focus on that now and I'll come  
9 back to you, Mr. Hart.

10           MS. HARRINGTON: At this juncture, your Honor, I mean,  
11 we are essentially at the beginning of this case. From my  
12 standpoint, what they're asking the Court to do is to kind of  
13 hop ahead into discovery without meeting and -- and obviously  
14 you rely upon the Sony Music case. We responded and addressed  
15 the Ibarra matter that they brought forth.

16           But from our standpoint from this case, there's no  
17 issue as to a statute of limitations. There's no pressing  
18 issue from otherwise -- from a pleading issue that would  
19 require the -- you know, the disclosure at -- you know, any  
20 immediacy.

21           They relied heavily on the Ibarra matter. And in the  
22 Ibarra matter, it -- procedurally the two cases are incredibly  
23 different. In Ibarra the case had been pending for over a year  
24 and a half, with a motion to dismiss that the court was  
25 simultaneously ruling upon. And so the court had an interest

1 of moving that case forward because it had been pending for  
2 that period of time and likely had statute of limitations  
3 issues presented for the plaintiff potentially at that point.

4 Here, there is no pressing issue requiring the  
5 disclosure of this information outside the normal means of the  
6 discovery process that the rules provide.

7 And with complete and all due respect to the  
8 plaintiff's family, I understand the grief that they clearly  
9 are having to go through in losing a family member. But the  
10 defendants have a right to be able to -- one, there is going to  
11 have to be a determination is there going to be conflicts  
12 created because of a potential criminal pending action or not.

13 THE COURT: Again, I don't understand what that has to  
14 do with the question of early discovery. I don't get that.  
15 Maybe I'm missing something, and it's entirely possible. I  
16 don't see what the criminal case has to do one iota with this  
17 question of early discovery. I don't understand that. So  
18 maybe you can enlighten me on that.

19 MS. HARRINGTON: Well, I can see what you're saying,  
20 your Honor. I mean, I do. But I guess the point is the  
21 plaintiff is coming in here asking the Court to abrogate the  
22 normal process in Rule 26.

23 THE COURT: On that point, as I take your argument,  
24 which you're entitled to make, I'll tell you what I am not  
25 hearing and I'll tell you what I am hearing and you can correct



1 me if I'm wrong.

2           What I'm not hearing is any argument as to why there's  
3 really any practical reason to withhold the identity of these  
4 officers at this point. We all know their identities are going  
5 to be disclosed in this case, and it's going to happen sooner  
6 than later probably, within two months I would imagine, maybe  
7 three, but more likely two.

8           Really, as I understand your argument, is you're just  
9 standing on what the rules say?

10           MS. HARRINGTON: Correct. And just from a -- I guess  
11 from a practical standpoint, your Honor, the practical  
12 standpoint is you have individuals that are -- and this is why  
13 I go back to the criminal investigation -- they have a criminal  
14 investigation pending. When their identity is disclosed to the  
15 public, if that issue is resolved, they either have the charge  
16 pending or the decision to not charge is -- so they don't have  
17 something pending against them. That is the interest of the  
18 police officers.

19           THE COURT: Again, though, what connection to a piece  
20 of civil litigation does that have? I mean, if Joe or Jane Q.  
21 Public can put two and two together and say this case received  
22 some public light, it's a controversial case, various officers  
23 were involved in an incident, a use of deadly force incident,  
24 some other public entity has made it known that there is a  
25 pending, potential, criminal investigation, that's for other

1 entities to deal with.

2 Here, if somebody in the public wants to put two and  
3 two together, that's up to them. I'm going to stand on my  
4 understanding of your argument, which is that the rules don't  
5 allow it unless there's good cause and here there's no good  
6 cause. Is that basically your argument?

7 MS. HARRINGTON: Agreed.

8 THE COURT: Okay. So let me turn back to Mr. Hart and  
9 ask about the good cause again, with the gloss of the question  
10 whether there's a central need for the subpoenaed information  
11 to advance the claim at this point.

12 MR. HART: Yeah, well, I think we do satisfy that  
13 requirement, your Honor, from a technical standpoint. I mean,  
14 the fact is that we're trying to get the necessary parties in  
15 this case.

16 THE COURT: Well, that's not really a fair  
17 construction of the Sony test because that's the case in every  
18 situation. So Rule 26 says you don't get early discovery  
19 unless there's good cause for early discovery.

20 You're going to get your discovery and you can move  
21 your case forward. No case can move forward without discovery.  
22 But the rules set forth a pattern.

23 So what is the extra special need for moving the case  
24 forward at this time that is not met by Rule 26?

25 MR. HART: Fair enough, your Honor. Although I do

1 think there is a distinction as it relates -- we're not trying  
2 to get a jump on our discovery rights here to do something  
3 extraordinary before the normal course this case takes.

4 But I do think it's instructive that this is a  
5 circumstance where the identity of the parties is readily known  
6 to a defendant in the matter, cannot be gotten any other way,  
7 and it will advance the case. So this is a very, very narrow,  
8 narrow scope here. And it will delay the case, as a point of  
9 fact, if we don't get it for two or three months. Then we have  
10 to name them, file a request to amend the complaint, serve  
11 them. It just doesn't seem reasonable or practical to take  
12 that route. That's form over substance and it just, to me,  
13 your Honor, respectfully, is a technicality that should not be  
14 observed here.

15 THE COURT: Okay.

16 MR. HART: I also --

17 THE COURT: I'll give you one more minute and then I'm  
18 going to make a ruling.

19 Go ahead.

20 MR. HART: Yeah. And I don't mean to belabor the  
21 point, but I think I did articulate before that there is a  
22 substantial harm to the family having these names withheld from  
23 them.

24 THE COURT: Okay. Thank you, Mr. Hart.

25 I'm going to deny the request for early discovery.

1 Let me tell you why. Mr. Hart has made a very able argument on  
2 behalf of the plaintiffs. But as I see this issue, and as  
3 informed by the helpful discussion from counsel for both sides  
4 today, I'm a believer in following the Rules of Civil  
5 Procedure. Rule 26 sets out a pretty clear standard that says  
6 a party may not seek discovery from any source until the  
7 parties have conferred as required by Rule 26(f). That's, of  
8 course, set forth in Rule 26(d). But parties can seek early  
9 discovery with leave of Court if there's good cause.

10 I've talked about the Sony Music Entertainment case  
11 from the Southern District of New York, which is, of course,  
12 not binding on me, but I use it as an instructive decision.

13 Ibarra is instructive as well. That, of course, is a  
14 decision from Judge Castillo.

15 As I see this motion, it boils down to whether there  
16 is a central need for the information that Mr. Hart is seeking,  
17 whether there's a central need for that information to advance  
18 the claim.

19 I understand your argument, Mr. Hart. It's well-  
20 presented. But I don't see that there's a central need to get  
21 out ahead of the ordinary course under Rule 26. It may very  
22 well be that there is no great practical reason for the Village  
23 of Carol Stream not to provide this information now, but I'm  
24 not here to set public policy. I'm here to follow the Rules of  
25 Civil Procedure. And a party is entitled to rely on the

1 language of the rules.

2           The arguments that have been advanced as to why early  
3 discovery is needed here -- on what I readily admit is an  
4 extremely narrow and focused request -- but the reason that's  
5 been proffered to me, the extreme and continuing harm to the  
6 family, as Mr. Hart has put it, doesn't persuade me that this  
7 discovery will ameliorate that extreme and continuing harm.  
8 The family members will get this information, almost certainly  
9 in the near term, too. But there's no good cause that I can  
10 see to make an exception here on public policy grounds and on  
11 what effectively are grounds that, well, it's a really tiny  
12 request so let's just do it. That's not an articulable  
13 standard in my mind.

14           I understand why Judge Castillo went the way he did in  
15 Ibarra. Judge Castillo may or may not have been motivated by  
16 questions of public policy in that case. I don't know.  
17 Ms. Harrington has identified a possible reason that that  
18 discovery was necessary, namely, that the claim was older,  
19 there was a pending motion to dismiss, and it needed to be  
20 moved forward. That may very well have been the primary or  
21 sole motivation of Judge Castillo.

22           But he made a decision in that case within his  
23 discretion. And in my discretion, I don't see good cause here  
24 to get out ahead of the ordinary course.

25           So we have a responsive pleading deadline of when?

1 April 26th did you say?

2 MS. HARRINGTON: 29th, your Honor.

3 THE COURT: 29th. Given the interests of the  
4 plaintiffs here, I'm not likely going to extend that. We may  
5 have extended it already. I don't think we did. But I'm not  
6 likely to extend that. I would like you both to meet and  
7 confer sooner than later on your Rule 26 obligations. I'm  
8 going to set a schedule in this case, depending on what happens  
9 with the responsive pleading issue. The rule requires that the  
10 Court enter a Rule 16 scheduling order within 90 days of  
11 service or 60 days of the appearance of any party. I have not  
12 calculated those dates. I'll trust that Mr. Hart will be all  
13 over that in the interest of moving the case forward.

14 Let's talk about when to have an initial scheduling  
15 conference. When do you suggest, Mr. Hart?

16 MR. HART: I would ask for the first week in May. I  
17 think that's certainly sufficient time for the parties to meet  
18 and confer and would be after the responsive pleading, which  
19 appears will be an answer. That would be plaintiff's  
20 preference.

21 THE COURT: What's the defendant s' view?

22 MS. HARRINGTON: I was looking for actually mid-May  
23 just because of a trial schedule, but I don't know that there's  
24 a huge difference there.

25 MR. HART: No problem.

1           THE COURT: Thank you, Mr. Hart. And thank you,  
2 Ms. Harrington. When you say mid-May, are you talking the week  
3 of May 13th or May 20th?

4           MS. HARRINGTON: May 20th.

5           THE COURT: All right. I will set it during that  
6 week, provided we don't have any barriers here. Stand by for a  
7 date, please.

8           (Brief pause.)

9           THE CLERK: May 22nd at 9:30.

10          THE COURT: And that will be by telephone unless you  
11 all want to come in again. Mr. Hart, do you prefer telephone  
12 or in person?

13          MR. HART: I enjoy being in court, your Honor, so I  
14 would elect in person. But if the Court's preference is by  
15 phone, we're certainly happy to accommodate that as well.

16          THE COURT: What's the Village's position, Ms.  
17 Harrington?

18          MS. HARRINGTON: In person is fine, your Honor.

19          THE COURT: Here's what I'm going to do, I'm going to  
20 set it for an in-person hearing. Depending on what the Rule 16  
21 proposed order looks like, I may just enter that order if  
22 you're largely in agreement and strike the hearing. And,  
23 spoiler alert, there's a very good chance if things go as  
24 Ms. Harrington has suggested -- and you're not bound to that  
25 course naturally -- but if there's an answer on the principal

1 claims here as opposed to a motion to dismiss, I will likely  
2 refer the case to the assigned magistrate judge because you'll  
3 get a little more attention and a little more guidance. And I  
4 expect there will be some discovery issues to work through.  
5 It's Judge Fuentes. All of our magistrate judges are excellent  
6 here. He is particularly experienced in cases like this. So  
7 the odds are I will refer the case to him, and he may set a  
8 different schedule.

9 But I'm going to ask you to please have that proposed  
10 Rule 16 order submitted -- the planning report filed on the  
11 docket and a proposed order submitted to me -- what was our  
12 date, Ms. Reyes?

13 THE CLERK: May 22nd.

14 THE COURT: May 22nd. If you could have that in a  
15 week beforehand, I think that would be helpful. And I may  
16 enter the order or I may just refer it to the magistrate judge.  
17 We'll wait and see what happens.

18 Please look at my web page. I've got a template there  
19 and detailed, turgid instructions on how to prepare that. So  
20 please take a look at that and heed that if you would.

21 Mr. Hart, I understand that I didn't come out the way  
22 you wanted, but I heard your argument. It's a well-presented  
23 argument, but I had to make a ruling, so there it is. Thank  
24 you for coming in.

25 Is there anything further from either side?



1 MR. HART: Not from plaintiff, your Honor.

2 MS. HARRINGTON: Not from defendant, your Honor.

3 THE COURT: All right. Have a good remainder of the  
4 week.

5 MR. HART: Thank you, your Honor.

6 MS. HARRINGTON: Thank you, your Honor.

7 (Which were all the proceedings had.)

8 \* \* \* \* \*

9  
10 I certify that the foregoing is a correct transcript from the  
11 record of proceedings in the above-entitled matter.

12 /s/ Nancy C. LaBella  
13 Official Court Reporter

May 10, 2024

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